

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause, by Tampa Electric Company.

DOCKET NO. 041300-EI
ORDER NO. PSC-05-0164-PAA-EI
ISSUED: February 10, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING COST RECOVERY THROUGH THE ENVIRONMENTAL COST
RECOVERY CLAUSE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On November 10, 2004, Tampa Electric Company ("TECO") petitioned for cost recovery through the Environmental Cost Recovery Clause ("ECRC") for a Comprehensive Demonstration Study to determine the effect of cooling water intake structures on aquatic life. The Comprehensive Demonstration Study is necessary to address rule changes adopted by the U.S. Environmental Protection Agency ("EPA") pursuant to Section 316(b) of the Clean Water Act. The new rules establish requirements to reduce the mortality of aquatic organisms by cooling water intake structures at certain existing large power plants, and are codified in 40 CFR Parts 9, 122, 123, 124, and 125. The new rules became effective September 7, 2004, however the new rules have been challenged.

Section 366.8255, Florida Statutes, the ECRC, gives the Commission the authority to review and decide whether a utility's environmental compliance costs are recoverable through an environmental cost recovery factor. Electric utilities may petition the Commission to recover projected environmental compliance costs required by environmental laws or regulations. Section 366.8255(2), Florida Statutes. Environmental laws or regulations include "all federal,

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state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment.” Section 366.8255(1)(c), Florida Statutes. If the Commission approves the utility’s petition for cost recovery through this clause, only prudently incurred costs may be recovered. Section 366.8255(2), Florida Statutes.

Effective September 7, 2004, the EPA established new performance standards for reducing the mortality of fish and shell fish associated with cooling water intake structures at certain existing large electric generating plants. The plants subject to the new rules must have commenced construction on or before January 17, 2002, and be designed to withdraw at least 50 million gallons per day from waters of the United States. The EPA estimates 22 existing power plants in Florida will be affected by the new performance standards. In Florida, the Department of Environmental Protection (“DEP”) will be incorporating the new performance requirements into utilities’ National Pollution Discharge Elimination System (“NPDES”) permits as the permits are renewed.

TECO’s affected power plants are shown in Table 1 below. Pursuant to the requirements of the new rules, TECO must first complete a Comprehensive Demonstration Study (“CDS”). The purpose of the CDS is to: 1) determine a quantified baseline impact and derive performance standards; 2) gauge the current performance of the facility against the performance standards; and, 3) develop and design appropriate measures for compliance if the facility falls short of meeting the performance standards. Thus, the CDS will provide TECO with the necessary information to determine the most efficient and cost-effective manner to meet the new performance standards. The DEP will use TECO’s CDS results as a basis for evaluating compliance and issuance of future NPDES permits for each plant. The expiration dates of TECO’s current NPDES permits are noted in Table 1. Each renewed NPDES permit is expected to codify additional TECO compliance requirements that are currently unknown.

The ECRC requires that “any costs in base rates may not also be recovered in the environmental cost recovery clause.” Section 366.8255(5), Florida Statutes. Thus, when a utility allocates costs for environmental studies in base rates and that allocation goes unused, the costs for any new studies to be passed through the ECRC should be offset by the unused portion of the allocations in base rates. See Order No. PSC-00-1167-PAA-EI, issued June 27, 2000, in Docket No. 991834-EI, In Re: Petition for approval of deferred accounting treatment for the Gulf Coast Ozone Study Program by Gulf Power Company. In that proceeding Gulf Power Company questioned the practice of offsetting, but we determined that the practice:

fairly balances the interests of the rate payers and shareholders and is consistent with Section 366.8255, Florida Statutes, which provides that “[a]n adjustment for the level of costs currently being recovered through base rates or other rate-adjustment clauses must be included in the filing.”

Both Florida Power & Light Company (“FPL”) and Progress Energy Florida, Inc., (“PEFI”) were granted ECRC treatment of their prudently incurred CDS costs consistent with the established offsetting policy. See Order No. PSC-04-0987-PAA-EI, issued October 11, 2004, in Docket No. 040582-EI, In Re: Petition for approval of recovery through environmental cost recovery clause

of costs associated with Clean Water Act Section 316(b) Phase II rule project by Florida Power & Light Company. See Order No. PSC-04-0990-PAA-EI, issued October 11, 2004, in Docket No. 040472-EI, In Re: Petition for approval of cost recovery for new environmental program necessitated by U.S. Environmental Protection Agency's adoption of rules establishing new requirements for cooling water intake structures at existing electric power generation facilities under Section 316(b) of Clean Water Act, by Progress Energy Florida, Inc.

A total amount of \$37,600 per year for environmental studies is included in TECO's current base rates which were set by Order No. PSC-93-0165-FOF-EI, issued February 2, 1993, in Docket No. 920324-EI, In Re: Application for a rate increase by Tampa Electric Company. The specific environmental studies and resultant costs have changed since 1993. For 2005, TECO budgeted \$575,400 for environmental studies that will not be recovered through the ECRC. This amount is \$538,000 in excess of environmental study costs currently recovered in base rates. Thus, allowing TECO recovery of costs through the ECRC is consistent with Order No. PSC-00-1167-PAA-EI because TECO is incurring costs for environmental studies in excess of the amount included in current base rates. Consequently, TECO's projected CDS expenses are eligible for recovery through the ECRC without adjustments. We note that, consistent with Order No. PSC-00-1167-PAA-EI, a future TECO filing may include a downward adjustment in the event that TECO's annual expenditures on environmental studies decline below the amount included in current base rates during the relevant ECRC recovery period.

Table 1
 TECO's Environmental Studies, Permits, and Costs

TECO's Affected Power Plants	Prior Impingement & Entrainment Studies		NPDES Permit Expiration Date	Estimated Cost for the Comprehensive Demonstration Study (See note)	Annual Costs for Environmental Studies not in clauses
	Year	Cost			
Big Bend	1977, 1979, and 1980	Not available	New permit under review. Application was made in February 2002.	November and December of 2004 \$50,000	\$37,600 allowance in current base rates
Bayside	None	Not applicable	January 2006	\$650,000 for 2005	2005 budget level is \$575,400

Note: The projected cost for the CDS activity through 2005 is based on TECO expert opinion. Actual costs will reflect competitive bid results.

The new EPA rules have been challenged by six states, several utilities, and several environmental groups. The challenge is currently pending before the U.S. Court of Appeals, Second Circuit, where it was transferred from the Ninth Circuit. The rule is in effect but it is impossible to know whether it will be stayed or changed in a way that affects TECO's CDS activity.

It is up to the utility to decide if it is prudent to start spending money on the program at this time, under these circumstances. As always, the issue of prudence will be reviewed at the annual November hearing on the ECRC. If the status or content of the EPA rule changes, TECO shall notify us within two weeks of such change and provide documentation of such change. The manner in which any such change will be handled procedurally and substantively will be addressed at that time.

TECO is requesting that the current ECRC factors not be changed. Instead, TECO proposes that all activity costs incurred subsequent to the filing of this Petition be included in its ECRC true-up filings and projection filing in the ECRC. All things being equal, the estimated monthly residential customer bill increase for the remainder of 2005 would be \$0.05 based on a 1,000 kWh/month usage for 10 months and allocating the costs to rate classes on a 12CP and 1/13 average demand basis. Thus, a mid-course correction is not necessary because including the CDS costs in the true-up cycle of the ECRC does not result in a substantive increase in customer bills.

Conclusion

TECO has shown that its CDS activity is legally required to comply with a governmentally imposed environmental regulation. TECO provided information explaining its proposed CDS activity and projected costs through 2005. TECO's 2005 CDS expenses are in excess of the level of costs currently being recovered through its base rates for environmental studies. The costs for CDS expenses shall be allocated to rate classes on a 12CP and 1/13 average demand basis. TECO can make subsequent ECRC filings addressing the ongoing nature of TECO's CDS activities. If the EPA rule is stayed or new content is proposed, TECO shall notify us within two weeks of such change.

For these reasons TECO's prudently incurred costs for the CDS are appropriate for recovery through the ECRC consistent with the offsetting policy established in Order No. PSC-00-1167-PAA-EI.

Based on the foregoing, it is

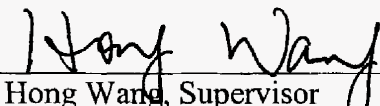
ORDERED by the Florida Public Service Commission that Tampa Electric Company's petition for cost recovery through the Environmental Cost Recovery Clause is granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 10th day of February,
2005.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: 

Hong Wang, Supervisor
Case Management Review Section

(S E A L)

MKS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 3, 2005.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.